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27 May 1975

MEMORANDUM FOR: Deputy Director for Operations

FROM: Chief, Services Staff

25X1A

SUBJECT: OGC [redacted] Memo to IRC dtd 13 May 75, subj: Third Agency Rule Under the Freedom of Information Act (with attached MOR)

1. Paragraph 10 contains a counter-proposal to subject memorandum.

2. Release of intelligence in whatever medium and whether in whole form, extract or paraphrase, within the USIB Community, elsewhere in Government, to cleared contractors, foreign governments or others is a major part of the intelligence cycle and as such, has been subjected to much deliberation by experienced intelligence officers. The process is of particular interest to the USIB Security Committee and USIB Information Handling Committee; the relevant Community directive implementing information dissemination policy is DCID 1/7, currently in draft for revision.

3. The National Security Council Directive of 17 March 1972, which implements Executive Order 11652, states, in Section VI.D., the negative, or restrictive, aspect of what has come to be called the "Third Agency Rule," i.e., "...classified information or material originating in one Department shall not be disseminated outside any other Department to which it has been made available without the consent of the originating Department."

4. For many years, the Intelligence Community has been in the forefront in the information handling world, its efforts including the development of standards and procedures to ensure and ease the dissemination of information to those who need to have it. The record will show clearly that CIA, nearly two decades ago, led the successful effort to introduce a permissive context for the 3rd Agency Rule, introducing the advance authorization concept, given specific control caveats for exception cases.

5. Following the 15 May meeting of the IRC, I sent copies of subject memo to knowledgeable individuals in CRS/DDI ([redacted]) 25X1A
25X1A DDO Operations Staff [redacted] and the
25X1A Legislative Counsel's Office [redacted]. They were unanimous in their opposition to subject proposal (as, subsequently was [redacted] and, 25X1A
in fact, the majority felt that current practice, in referring to the

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existence of other agencies' materials in CIA files, is more responsive than it needs to be according to our published procedures in the Federal Register; such gratuitous comment, they feel, should cease because of its additional workload impact and its possible compromise of Exemption 7A (interference with enforcement). On the other hand, the DDI/FIO [redacted] 25X1A and the CIA/FIO [redacted] are inclined to agree with a procedure which 25X1A would inform an individual, inquiring as to the existence of personnel records on himself, that other agencies' materials are in our files, and to identify the agency (ies).

6. One complexity in addressing this subject is that it encompasses both security/investigatory-type information on individuals, groups or organizations and substantive intelligence information. The DDI can, and does, machine-select only CIA reports relevant to individual requests in accord with our Federal Register definition of CIA Records. To reference all agencies' materials in CRS' files would pose a dramatic workload increase not, it would seem, contemplated by [redacted] 25X1A since he seems to be addressing the first category, security/investigative files; he does suggest, however, that his tentative agreement be adopted as a Government-wide standard. D/OS has said that the [redacted] proposal 25X1A would triple his workload; AC/CIOPS says flatly, "We should enter into no such agreement with any other agency."

7. A further complexity, with respect to the definition of an Agency record, is that we frequently incorporate, in whole or part, in CIA report format other agency name check requests and send them to the field; responses, of course, are in Agency cable format. There is some general feeling that these documents should be exceptions and their release should be coordinated with the agency which originated the trace.

8. The [redacted] proposal, describes situations in paragraphs 1 and 25X1A 2 which would require two-way communication, each time either agency received an FOI request to ask, "Did you get one too?"--which answer, if negative, would only be valid as of that moment. With 50-100 requests per day, the workload, as our S&T friends say, would be non-trivial. [redacted] suggests, and I strongly agree, that when we amend our SOP in the Register, we ask not only for basic identifying data (as we are now 25X1A doing on requests received without it) but also for a statement as to whether other agencies (specified) have been/will be queried.

9. Two additional points with respect to the proposal: it is claimed that Justice feels that our definition of Agency records and subsequent handling of "third agency documents under FOI will probably be overturned by the courts." I am curious to know how definitive a position that is. A reading of the 1974 FOI Amendment, Justice memoranda on it, the 1967 Act, E.O. 11652 and its implementing NSC Directive and the Code of Federal Regulations (Title 41, Chapter 101, Subchapter B, Archives and Records)

reflects considerable ambiguity with respect to the definition of a record*. As noted before, DCID 1/7 reflects considerable sophistication and positive intent. I suggest we follow that lead and stand firm on our definition until/unless it is, in fact, challenged. Which raises the second point: the tentative agreement, based on a telephone call with the FBI/FIO may or may not have been coordinated inside the bureau with the FBI USIB Security Committee and IHC members. I suggest, strongly, that we get some indication of the Bureau's USIB-oriented views.

10. There is need to adopt a consistent approach on the 3rd Agency issue. My reading of the latest Attorney General guidance, cited below, is that we have more flexibility than I would have expected from the initial guidance. One can, and should only make declassification on one's own documents and classification is not the only exemption criterion. I recommend:

a. That until/unless there is a challenge to our definition of an Agency record in the Federal Register, we stand on it, excluding any other agencies' reports, classified or unclassified;

b. Consistent with that approach, and that of DDI searches for substantive reports, that we cease stating in our responses to requesters that other agency reports (not identified and therefore only provocative as a statement) are also in the file;

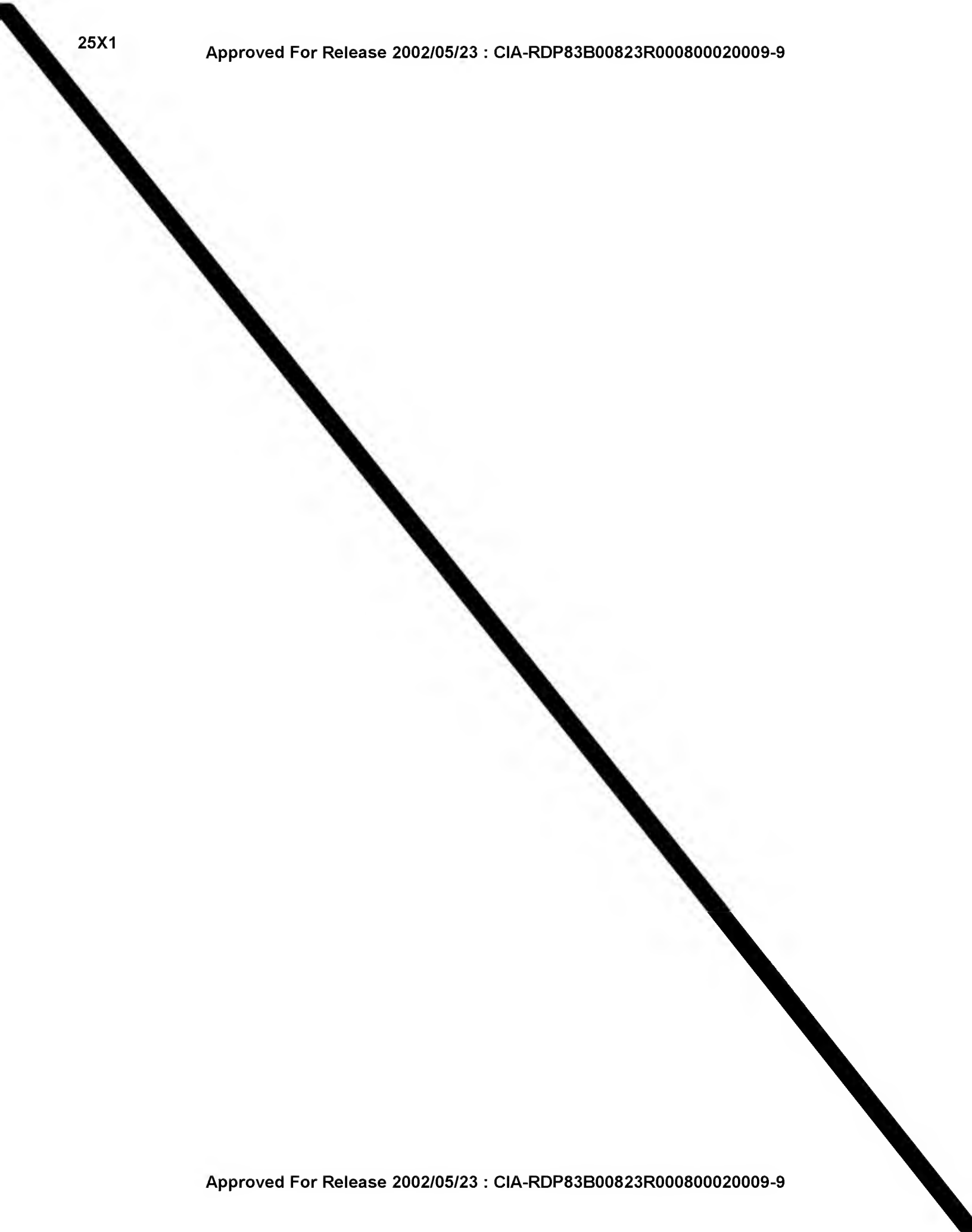
c. That in the special case where an FBI (or other) name trace request is incorporated in toto, or large measure, in an Agency transmittal, with response in Agency format, FOI release decisions be coordinated in each case with the trace requesting agency.

25X1A

[redacted]

Chief, Services Staff

*In fact, the Attorney General's memorandum of February 1975 (just received) states that "...'an agency record'...is nowhere defined...,' saying also that, in keeping with E.O. 11652 "...it would appear appropriate..." to refer other agencies' materials to them for release decision.



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